IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

CRL.REV.PET.NO. 4483 OF 2006()

CRIME.NO.349/2006 OF SUB DIVISIONAL MAGISTRATE,TIRUE)
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REVN. PETITIONER:

MUHAMMEDKUTTY, MAYYERI HOUSE,
VALAVANNUR, TIRUR TALUK.

BY ADV. SRI.A.KRISHNAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE STATION HOUSE OFFICER,
KALPAKANCHERRY POLICE STATION.

BY PUBLIC PROSECUTOR (SRI.C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.R.P. No.4483 of 2006

Dated this 16th day of January, 2007.

ORDER

A car bearing registration No.KL-10 H/1010 which was found in an abandoned state on a public road was taken into custody by the police and it was produced before the Sub Divisional Magistrate, Thirur. The petitioner filed a petition for release of the vehicle but it was dismissed mainly on the ground that the registered owner is some other person. The said order is challenged in this revision.

2. Learned counsel appearing for the petitioner argued that the impugned order is illegal. On hearing both sides, it appears that the siezure of the vehicle comes under section 102 of the Code of Criminal Procedure (the code, for short). As per Section 102, any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence. Since the vehicle was found in an abandoned position in a public place, presumably suspecting commission of offence, the seizure might have been

effected under section 102 (1) of the Code.

3. Sub-section (3) of Section 102 lays down that every police officer acting under sub-section (1) shall report the seizure to the "Magistrate" having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond, undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

4. Thus, it is clear that the police officer who seizes the vehicle has to take steps to report the seizure to the Magistrate and also for disposal of the property by the police subject to any further orders being passed by the court. But, the police has reported the siezure to the Sub Divisional Magistrate and not to the Judicial Magistrate. Section 3(1)(a) of the code lays down that any reference, without any qualifying words is made to a Magistrate, it shall be construed, unless the context otherwise requires, in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate. Therefore, "Magistrate" referred to in section 102 of the code is a Judicial

Magistrate and not a Sub Divisional Magistrate.

5. In such circumstances, production of the car before the Sub Divisional Magistrate itself is in violation of Section 102 of the Code read with Section 3(1)(a) of the Code. The Sub Divisional Magistrate before whom the car is wrongly produced has no jurisdiction to pass any order in respect of custody of the vehicle. The order under challenge is therefore illegal and without jurisdiction. It is liable to be set aside and I do so.

6. The respondent is directed to produce the vehicle before the Judicial Magistrate having jurisdiction as per Section 102 of the Code without any delay, in which event, petitioner will be at liberty to apply for custody of the vehicle and the Magistrate shall dispose of the application on merit, in accordance with law. I make it clear that I have passed this order, without considering petitioner's entitlement, if any, for custody.

This petition is allowed.

K. HEMA, JUDGE.

Krs.